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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. [redacted] 7

ENGLAND, ET AL.,

Appellants,

versus

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS, ET AL.,

Appellees.

On Appeal from the Three-Judge United States District Court for the Eastern District of Louisiana

MOTION TO DISMISS OR AFFIRM

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HAUSER PRINTING CO., INC., NEW ORLEANS

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Appellees, Louisiana State Board of Medical Examiners, Dr. Rhett McMahon, President of the Board, and Dr. Edwin Lawson, Secretary-Treasurer of the Board, and intervenor, Louisiana State Medical Society, move the Court to dismiss the appeal herein on the grounds hereinafter set forth, or to affirm the judgment sought to be reviewed on appeal on the ground that it is manifest that the questions on which the decision of this cause depend are so unsubstantial as not to need further argument.

In this proceeding a number of chiropractors sought a declaration of their right to practice without comply-

ing with the requirements of the Louisiana Medical Practice Act, La. R. S. 37:1261, *et seq.* They challenged the applicability of the Act to their profession, and its constitutionality if so construed. On remand by the Court of Appeals from an initial judgment of dismissal, *England v. Louisiana State Board of Medical Exam.*, 259 F. 2d 628, rehearing denied, 263 F. 2d 661, certiorari denied, 359 U.S. 1012, a three-judge court was convened.

After a hearing, the three-judge court abstained from deciding the issues and remitted the parties to the Courts of Louisiana so that those tribunals might "determine the issues here presented." Jurisdiction was retained "for the purpose of taking such action as may be necessary for the just disposition of the litigation, absent a prompt state court determination." *England v. Louisiana State Board of Medical Examiners*, E.D. La., 180 F. Supp. 121.

Appropriate proceedings were filed in the state courts and the Louisiana Court of Appeals for the Fourth Circuit, affirming the trial court, ultimately found against plaintiffs' contention, expressly holding that the application of the Medical Practice Act to chiropractic examiners, though it effectively deprived them of practicing their profession or cult, did not violate any provision of the Federal Constitution. *England v. Louisiana State Board of Medical Examiners*, La. App. 126 So. 2d 51. On February 15, 1961, the Louisiana Supreme Court refused to review that decision, stating "The judgment of the Court of Appeal is correct." La. Sup. Ct. No. 45,509. No appeal was taken to the Supreme Court of the United States. The appellants then filed a motion in the three-judge United States District Court entitled: "Motion to Vacate Abstention Order and for a Temporary Restraining Order". The appellees filed a motion for dismissal of the cause. The matter was heard by the three-judge

court which held in effect that it had no power to review the decision of the courts of Louisiana and that appellants' proper remedy had been by appeal to the Supreme Court of the United States. This latter decision is reported in 194 F. Supp. 521, and is also quoted in full in the Appendix to appellants' "Statement as to Jurisdiction".

It hardly seems necessary to present further argument as the opinion of the three-judge court clearly points out that the issues presented on this appeal "are so unsubstantial as not to need further argument". The three-judge court refers to the cases of *Government Employees v. Windsor*, 353 U.S. 364, and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413.

In the *Windsor* case, *supra*, this Honorable Court held that the district court should retain jurisdiction of the suit until efforts to obtain appropriate adjudication in the state courts were exhausted. In the *Rooker* case, *supra*, this Honorable Court held that where a state court had passed on the federal questions, well established principles will bar a relitigation of those issues in the United States District Court.

We also refer the Court to the case of *Louisiana Power and Light Co. v. Thibodaux*, 360 U.S. 25, wherein this Honorable Court concluded:

> "The judgment of the Court of Appeals is reversed and the stay order of the District Court reinstated. We assume that both parties will cooperate in taking prompt and effective steps to secure a declaratory judgment under the Louisiana Declaratory Judgment Act, La. Rev. Stat., 1950, Tit. 13, Secs. 4231-4246, and a review of that judgment by the Supreme Court of Louisiana. **By retaining the case the District Court, of course, reserves power to take such steps as may be neces-**

sary for the just disposition of the litigation should anything prevent a prompt state court determination." (Emphasis ours)

Additionally we wish to point out that there is no substantial issue as to the constitutionality of the Louisiana Medical Practice Act, L.R.S. 37:1261, *et seq.* See the case of *England v. Louisiana State Board of Medical Exam.*, La. App. 126 So. 2d 51. Also, this Honorable Court passed on all the issues presented in the recent case of *Hitchcock v. Collenberg*, 140 F. Supp. 894, affirmed 353 U.S. 919. We also refer this Honorable Court to the following decisions: *Dantzler v. Callison*, 94 S.E. 2d 177, 352 U.S. 919; *Dent v. West Virginia*, 129 U.S. 114; *Douglas v. Noble*, 261 U.S. 165; *Graves v. Minnesota*, 272 U.S. 425; *Louisiana State Board of Medical Examiners v. Cronk*, 157 La. 321, 102 So. 415; *Louisiana State Board of Medical Examiners v. Fife*, 274 U.S. 720; *Taylor v. Oklahoma*, 352 U.S. 805; *Williamson v. Lee Optical Company*, 348 U.S. 483.

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CERTIFICATE

I, Robert E. LeCorgne, Jr., one of the attorneys for appellees herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the _____ day of _____, 1961, copies of the foregoing motion to dismiss or affirm the appeal were served on the appellants herein by air-mailing same in duly addressed envelopes with postage prepaid to their attorneys of record, as follows:

To J. Minos Simon, 301 Congress Street, Lafayette, Louisiana, Russell Morton Brown, Suite 500, Bowen Building, 815 Fifteenth Street, N.W., Washington 5, D. C., and Floyd J. Reed, 919 Maison Blanche Building, New Orleans 16, Louisiana, Attorneys of Record for Appellants.

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